NO. 82-1670

In the Supreme Court of the United States

OCTOBER TERM, 1982

CHITIMACHA TRIBE OF LOUISIANA, ET AL.,

Petitioners

VERSUS

HARRY L. LAWS COMPANY, INC., ET AL.,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT BRIEF OF RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether this Court should review the ruling by the United States Court of Appeals for the Fifth Circuit that it was not an abuse of discretion for the District Court to deny a motion for disqualification where it had been alleged that immovable property owned by the judge was within petitioners' aboriginal territory, although it admittedly was not within the area claimed in the litigation or the area covered by the deeds at issue.

II. Whether this Court should review the ruling by the United States Court of Appeals for the Fifth Circuit that having sold the property in question and having failed to file a claim to the property pursuant to the Louisiana Land Claims Acts, the Chitimachas forfeited any claim they might otherwise have had to the property.

PARENTS, SUBSIDIARIES AND AFFILIATES OF RESPONDENTS

A list of all parent companies, subsidiaries (except wholly-owned subsidiaries) and affiliates of the corporate respondents on behalf of whom this brief is filed is contained in the Joint Brief for Defendants-Appellees filed in the Fifth Circuit. The only amendments needed to make that listing currently accurate are the following:

(1) Ontario Terminals, Inc.; Chapin, Kieley & Howe, Inc.; and Nihon Atlantic Company, Ltd. are no longer affiliates of Atlantic Richfield Company; and

(2) Anaconda-Ericsson, Inc.; Anamax Mining Company; Atlantic Richfield de Mexico, S.A. de C.V.; Aughinish Alumina, Ltd.; Aughinish Estates; Aughinish Finance, Ltd.; Bingham Development Company; Blair Athol Coal Pty., Limited; Caribou-Chalsur Bay Mines Ltd.; Eisenhower Mining Company; Flower Street Limited; F.T.L. Company Limited; Imperial Eastman de Mexico, S.A.; Jamaica Alumina Security Company Ltd.; Kuparuk Transportation Company; Las Quintas Serenas Water Company; Mayflower Mining Company; Middle Swansea Mining Company; R. W. Miller (Holdings) Limited; Minera Anaconda Limitada; Montoro, Empresa Para La Industria Quimica; New Bingham Mary Mining Company; Oil Shippers Service, Inc.; P. T. Arutmin Indonesia; Park Cummings Mining Company; Park Premier Mining Company; Participaciones Mexicanas, S.A. de C.V.; Patten Mining Company; Platte Pipe Line Company; Productos Especiales Metalicos, S.A.; Smoke House Copper Mining Company; Solvamax, S.A. de C.V.; and West Mayflower Mining Company have become affiliates of Atlantic Richfield Company.

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STATUTES INVOLVED

Act of March 2, 1805, 2 Stat. 324; Act of April 21, 1806, 2 Stat. 391; Act of March 3, 1807, 2 Stat. 440. These enactments are referred to hereinafter collectively as "the Louisiana Land Claims Acts,"[1] and sometimes individually by the year of their passage (*e.g.*, "the 1805 Act"). Because petitioners have failed to set out the text of the Louisiana Land Claims Acts in compliance with Rule 21(F) of this Court, respondents have done so in the Appendix to this brief.

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[1] Although additional land claims statutes were subsequently enacted, titles to the tracts at issue in this litigation were confirmed in the vendees of the Chitimachas under the 1805, 1806 and 1807 Acts. Therefore, only these land claims statutes are directly involved here.

28 U.S.C. §§ 144 and 455. Since petitioners have set out the text of these statutes in their argument, respondents have not reproduced them herein.

The additional constitutional provisions and statutes listed by petitioners are not directly involved in the issues presented for review, and, therefore, respondents have not reproduced them herein.

STATEMENT OF THE CASE

Of central importance to the issues presented for review are the facts relating to the sale by the Chitimachas of various tracts of land in St. Mary Parish, Louisiana, to respondents' ancestors-in-title, and the Chitimachas' failure to file any claims concerning these tracts pursuant to the Louisiana Land Claims Acts. The tracts at issue are shown on the composite plat of Townships 13 and 14 South, Range 9 East, St. Mary Parish, Louisiana, which is reproduced as the last page of the Appendix to this brief.

Contrary to the implication in petitioners' statement of the case, the deeds by which the Chitimachas sold the tracts were *not* executed subsequent to the Louisiana Purchase by the United States in 1803, but rather, they were executed in the late 1700's during the period of Spanish sovereignty.[2] Also, despite petitioners' implication to the

[2] Thus, the Indian Nonintercourse Act, 25 U.S.C. § 177, which prohibits the purchase of Indian lands within the United States, except by treaty or convention pursuant to the Constitution, has no application in this case. The deeds at issue were executed while the territory was under Spanish dominion, the land was not "within the United States," and therefore, the laws of the United States did not apply to the sales. *See* The Opelousas Report, reproduced in American State Papers, Public Lands, Claims in the Western District of Louisiana, Vol. III, p. 91, Gales & Seaton Edition.

contrary, the deeds did not purport to alienate *all* of the area claimed by the Chitimachas as their aboriginal territory, but only the tracts in St. Mary Parish shown on the attached plat that are shaded in yellow, blue, red and cross-hatched red. The following are the facts[3] regarding these tracts that are material to the issues presented for review.

On October 2, 1794, the Chief of the Chitimachas executed a deed before the Spanish Commandant of the Attakapas Post conveying the tract shaded in yellow to Frederick Pellerin; on June 22, 1799, the Chief executed a deed before the Commandant conveying the tract shaded in blue to Marie Joseph; and on September 10, 1794, the Chief executed a deed before the Commandant conveying the tract shaded in red and cross-hatched red to Philip Verret.

After the Louisiana Purchase by the United States, and because of the confused state of record title in the territory purchased, Congress passed the Louisiana Land Claims Acts.[4] The first in the series was the 1805 Act, which required that every person claiming land in the

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(Footnote 2 continued)
In connection with their contention that the deeds effectively divested the Chitimachas of all interest they may have had in the land, respondents showed in their motions for summary judgment that all of the requisites under Spanish law were satisfied as regards each of the deeds. While neither of the lower courts reached this issue, since the merits were disposed of on other grounds, the validity of the deeds is an independent ground showing the correctness of the decisions below.

[3] The decision for which review is sought was rendered on respondents' motions for summary judgment. Documentation of the factual basis for the motions was submitted in four volumes of exhibits filed in the lower court. Petitioners here do not question the propriety of the court having disposed of the case on summary judgment.

[4] The acts are supplementary and are to be construed together. *United States v. Arredondo*, 31 U.S. (6 Peters) 691, 8 L.Ed. 547 (1832).

territory by virtue of an incomplete title derived from a prior sovereign had to file a claim with the Register of the Land Office, and provided that any such claims not filed would "become void, and for ever thereafter be barred." Section 4. A Board of Land Commissioners was established to review and analyze all claims filed and to report their findings to Congress. Section 5. Included among the lands that were subject to the statute were lands "to which the Indian title had been extinguished." Section 1. The act further provided for the survey of all lands within the territory "to which the Indian title has been, or shall hereafter be extinguished." Section 7. The 1806 Act extended the time for filing claims, but contained language barring unfiled claims that was similar to that contained in the 1805 Act. The same was true of the 1807 Act, which additionally entrusted to the Land Commissioners the authority to make final decisions as to the validity of all claims presented to them.

Although Pellerin, Joseph and Verret[5] filed claims to their respective tracts pursuant to the Louisiana Land Claims Acts, the Chitimachas filed no claims to those tracts. The titles of Pellerin, Joseph and Verret were confirmed, final certificates were issued, and the tracts were surveyed as provided for in the acts.[6]

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[5] Verret had previously sold the portion of his tract that is crosshatched red on the attached plat, and, therefore, he only sought confirmation of the red-shaded portion.

[6] In support of their motions for summary judgment, respondents showed that any claims the Chitimachas may have had to the tracts were extinguished by the United States' confirmation of the Pellerin, Joseph and Verret titles, based upon their deeds from the Chitimachas and evidence as to their possession. Although the Fifth Circuit did not decide the case on this ground, it is an independent basis for the decision in respondents' favor.

Until the filing of this lawsuit on July 15, 1977, the Chitimachas asserted no interest in or title to the Pellerin, Joseph or Verret tracts.[7] In this suit, however, they claim certain portions of each of the tracts, comprising a total of nine sections in the two St. Mary Parish townships. The complaint alleged that these sections were once part of the Chitimachas' aboriginal territory, and it named as defendants certain of the record owners of interests in the nine sections.

The case was assigned to Judge Eugene Davis. Petitioners state that they approached Judge Davis in October 1977 with the information that he was believed to own immovable property within their aboriginal territory. They

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[7] Under a subsequent land claims act, Act of May 11, 1820, 3 Stat. 573, the Chitimachas filed a claim ("Claim A 27") seeking confirmation of their ownership of the tract shaded in orange on the attached plat. No land in this tract is at issue here. Although the Register of the United States Land Office recommended the claim for confirmation by Congress, by Act of May 16, 1826, 4 Stat. 168, every recommended claim was confirmed except Claim A 27. The Chitimachas' claim to the tract was eventually recognized in *Chitimacha Indians, et al. v. United States*, United States District Court, Eastern District of Louisiana, No. 62, Supreme Court of the United States, No. 278 ("Suit 62"), pursuant to yet another land claims act, Act of May 26, 1824, 4 Stat. 52, extended to Louisiana by Act of June 17, 1844, 5 Stat. 676. In both Suit 62 and Claim A 27, the Chitimachas relied upon the deeds at issue here, and the United States' confirmation of the titles of the vendees, as evidence of their original occupation of the area and as authority that their claim to the orange-shaded tract should also be confirmed.

Based on the decision in Suit 62 and the decision in a subsequent case involving the same tract, *United States v. Abraham, et al.*, United States District Court, Eastern District of Louisiana, New Orleans Division, No. 2256, respondents urged the defenses of res judicata, collateral estoppel and judicial estoppel as a basis for summary judgment. Again, while the lower courts did not need to reach these defenses, they provide independent grounds supporting the decision below. This is particularly true with regard to the tract crosshatched red on the attached plat, since the successors through Philip Verret to that tract were co-plaintiffs with the Chitimachas in Suit 62, and they were recognized by the decision in that suit to be the owners of the tract.

further state that Judge Davis refused their request that he recuse himself. Respondents have no information regarding that request, since apparently it was informal and not through any written pleadings. There is absolutely no record of the statement attributed to Judge Davis in the petition.

On February 15, 1979, after the case had been pending for over a year and a half and had been extensively developed, motions for summary judgment were filed by the defendants in which numerous independent grounds were urged for the denial of petitioners' claims. The motions were originally set for hearing on November 8, 1979, but the hearing was later continued to November 14, 1979. On November 7, 1979, petitioners filed a motion for leave to file an amended complaint, *inter alia*, to add an allegation specifying the parishes which they claim were once within their aboriginal territory. Iberia Parish, one of the parishes named, is the parish in which Judge Davis resides. On November 13, the eve of the day which had been set months in advance for hearing on the summary judgment motions, petitioners filed a motion to disqualify Judge Davis pursuant to 28 U.S.C. §§ 144 and 455. While other grounds for disqualification were alleged, petitioners only present for review the question of whether disqualification should have been granted because of the allegation that Judge Davis owns immovable property within the area claimed to have been within the Chitimachas' aboriginal territory.

At the November 14 hearing, Judge Davis dealt only with the motion to disqualify. He stated that the petitioners' delay in filing the motion was itself a sufficient ground for denying the motion. Nevertheless, he did not rule on the motion, but instead requested that Chief Judge

Nauman Scott reassign it to another judge. Judge Davis specifically stated that he knew of no interest that he had in the outcome of the litigation, but he pledged to recuse himself if another judge found even the appearance of impropriety in his presiding over the case.

On January 22, 1980, Judge Scott denied the proposed amendment to the complaint on the ground that since petitioners did not assert a claim to any areas outside the nine sections originally claimed, the amendment was unnecessary.[8] Judge Scott also ruled that Judge Davis was not disqualified from presiding over the case, *inter alia*, because petitioners had not alleged that Judge Davis resided on or owned any part of the land claimed in the litigation.

On January 31, 1980, Judge Davis reset respondents' motions for summary judgment for hearing, and on April 24, 1980, Judge Davis granted the motions.[9] On November 5, 1982, the Fifth Circuit Court of Appeals affirmed both Judge Scott's decision denying petitioners' motion to disqualify and Judge Davis' decision granting respondents' motions for summary judgment. Petitioners' motion for rehearing was denied by the Fifth Circuit on January 14, 1983.[10]

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[8] That ruling is clearly correct, since the exact extent of the aboriginal territory, and whether other lands not being claimed were within that territory, is irrelevant.

[9] Less than 72 hours before the hearing date, the Chitimachas filed a motion to set aside Judge Scott's ruling regarding the disqualification of Judge Davis, and also urging that Judge Scott disqualify himself because of his alleged ownership of mineral interests in the area affected by the suit. Petitioners did not appeal the denial of this motion, nor have they presented any question regarding Judge Scott's disqualification for review by this Court.

[10] In their statement, petitioners imply that there was some

ARGUMENT

I. Chief Judge Nauman Scott Did Not Abuse His Discretion In Refusing To Disqualify Judge Eugene Davis Because Of The Allegation That The Judge Owns Immovable Property Within The Aboriginal Territory Of The Chitimachas, But Admittedly Not Within The Area Claimed In The Litigation Or The Area Covered By The Deeds At Issue, And The Affirmance Of The Decision By The Fifth Circuit Does Not Conflict With The Decisions Of Any Other Courts Of Appeal.

In phrasing the first question presented for review as being whether a federal district judge should be disqualified where it is asserted that he has a financial interest in the outcome of the litigation, the petition is misleading. Neither Judge Scott nor the Fifth Circuit held that a judge who has a financial interest in the outcome of the litigation should not be disqualified. Rather, they held that Judge Davis was not shown to have any interest, financial or otherwise, that would be affected by the litigation.

In reality, the question presented is whether the District Judge abused his discretion in refusing to disqualify Judge Davis on the basis of petitioners' allegation that Judge Davis owns property within their aboriginal territory. Even conceding that the property owned by

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(Footnote 10 continued)
irregularity regarding their attempt to obtain Judge Davis' financial statement. The facts surrounding the financial statement, however, are more accurately discussed in the opinion by the Fifth Circuit. In any event, despite being given the opportunity to do so, petitioners did not assert anything disclosed in the statement as a basis for disqualification, and they have not presented for review any question regarding the statement.

Judge Davis was within the Chitimachas' aboriginal territory, the Fifth Circuit concluded that this was not a ground for disqualification, since it was not shown that the disposition of the Chitimachas' claim to the tracts involved in the lawsuit would have any effect on Judge Davis' title.

In urging that the decision below conflicts with decisions by other federal courts of appeal, petitioners cite two wholly inapposite cases. *United States v. Studiengesellschaft Kohle, m.b.H.*, which presumably is the case reported at 670 F.2d 1122 (D.C. Cir. 1981), was a patent law case having nothing to do with the question of disqualification. In *In re Antitrust Litigation*, presumably the case reported at 688 F.2d 1297 (9th Cir. 1982), the court noted in passing that 28 U.S.C. § 455(b)(4) requires disqualification where a judge has "a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings;" however, the issue in the case was whether a financial interest in a class member constitutes a financial interest in a party.

Quite obviously, had Judge Davis been shown to have either (1) a financial interest, however small, in the subject matter in controversy or in a party to the proceeding, or (2) some other interest that could be substantially affected by the outcome of the proceedings, and had he not been disqualified, there would have been a conflict, not only with other court of appeal decisions, but also with the plain language of Section 455. That, however, is not the case here. Rather, the decision on disqualification was based on the conclusion that Judge Davis was not shown to have *any* interest that would be affected by the litigation. While petitioners argue that this conclusion is erroneous, they do so only in a conclusory fashion.

Petitioners do not contend that Judge Davis has a "financial interest in the subject matter in controversy." The subject matter in controversy is the land claimed in the lawsuit, and it has never been alleged that Judge Davis has an interest in any of that land. Petitioners argue only that Judge Davis has an interest that will be affected by the outcome of the litigation.[11] In this connection, petitioners cite *Oneida Indian Nation of New York v. County of Oneida*, 434 F.Supp. 527, 530 (N.D. N.Y. 1977). In that case, however, the controlling issue was whether a 1795 instrument by which the State of New York acquired 100,000 acres from the Oneida Indians was effective or whether it was void for failure to comply with the Indian Nonintercourse Act. Although only a portion of the land conveyed by the instrument was claimed by the Indians in the lawsuit, the court pointed out that the owners of the remaining 100,000 acres *conveyed by the same instrument* would also be affected.[12]

In this case, Judge Davis was not alleged to own an interest in any of the St. Mary Parish lands conveyed by the deeds at issue. It was only alleged that he owns property in another parish which purportedly was at one time a part of petitioners' aboriginal territory. From this allegation, petitioners conclude that Judge Davis has an interest that will be affected by the outcome of the litigation. However, as the Fifth Circuit pointed out, the problem is that they fail to show it.

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[11] There is no question presented regarding whether Judge Davis has a financial interest in a party to the proceeding, or whether he was shown to have any personal bias or prejudice under 28 U.S.C. § 144, other than that which might be related to his ownership of property which at one time was allegedly within petitioners' aboriginal territory.

[12] The court's statement had nothing to do with disqualification, since that was not an issue in the case.

The outcome of this case depends upon the deeds to the particular tracts of land involved and the confirmation of the titles to those tracts. The applicability of the decision to any other tracts of land within the expanse of petitioners' claimed aboriginal territory will depend upon whether the titles to those tracts have deraigned similarly to the titles to the Pellerin, Joseph and Verret tracts. Petitioners have not alleged any factual information concerning the title to Judge Davis' property, and thus there is no basis for their conclusory assertion that Judge Davis' title will be affected by the outcome of this case.[13]

Petitioners also assert that a writ should be granted in this case because in affirming Judge Scott's refusal to grant disqualification, the Fifth Circuit "sanctioned a departure, by the District Court, from the accepted and usual course of judicial proceedings." Presumably, the procedure in question is the one discussed by petitioners in their argument, *i.e.*, Judge Scott's having ruled on their motion to amend at the same time that he ruled on the motion for disqualification. Petitioners' assertion to the contrary notwithstanding, and as the Fifth Circuit pointed out, the motion to amend was in fact transferred to Judge Scott together with the motion to disqualify. Apparently, without the benefit of hindsight, both Judge Davis and

[13] If any facts existed regarding Judge Davis' property that would have justified disqualification, they would have been historically verifiable and, therefore, they could have been alleged by petitioners. Thus, this case is distinguishable from cases such as *In re Virginia Electric & Power Co.*, 539 F.2d 357 (4th Cir. 1976), and *In re New Mexico Natural Gas Antitrust Litigation*, 620 F.2d 794 (10th Cir. 1980), where it was shown that as a result of *future* contingencies, the decisions rendered might have affected a financial interest owned by the respective judges by virtue of the fact that they were ratepayers of the plaintiffs. Even in these cases, however, disqualification was held to be inappropriate since the interests were too speculative and contingent to be considered a "financial interest" or "other interest that could be substantially affected by the outcome of the proceeding."

Judge Scott believed that the allowance or disallowance of the amendment might have had some bearing on the question of disqualification. In truth, as the Fifth Circuit pointed out, the decision would have been the same regardless of whether the amendment had been granted. In any event, Judge Scott's decision on disqualification reveals that he did nothing more than petitioners claim that he should have done, *i.e.*, determine whether petitioners' affidavit was legally sufficient to warrant disqualification. Petitioners have not shown any departure by the lower court from the accepted and usual course of judicial proceedings.

Thus, the decision on disqualification is entirely correct, and there is no question regarding either the decision or the procedure by which it was rendered that warrants review by this Court.

II. The Decision Of The District Court, Affirmed By The Fifth Circuit, That The Chitimachas Have Forfeited Any Claim They Might Otherwise Have Had To The Land Involved In This Litigation Is Entirely Correct And Is In Full Accord With This Court's Prior Decisions.

Petitioner's statement of the second question presented for review, like their statement of the first, is misleading. Contrary to petitioners' implication, there has been no broad holding in this case that the passage of the Louisiana Land Claims Acts extinguished all aboriginal title claims within the Louisiana Territory. It has never been argued, and the lower courts did not hold, that the mere passage of the Louisiana Land Claims Acts operated to extinguish aboriginal titles in Louisiana. It is only the operation of the preclusive provisions of those acts that is presently in question. The Fifth Circuit held that since the

provisions applied to all persons having claims based on incomplete titles, and since aboriginal claims were not specifically excluded, the preclusionary provisions of the acts applied to the Chitimachas' claims to the tracts at issue here.[14] This holding is in full accord with the prior decisions of this Court, including the decision in *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 62 S.Ct. 248, 86 L.Ed. 260 (1941), relied upon by petitioners.

There can be no question but that the Louisiana Land Claims Acts were intended to apply to claims to lands lying within areas that may have been affected by Indian occupancy rights. Congress was clearly aware that land in the Louisiana territory had previously been subject to Indian occupation. The 1805 Act specifically provided for the confirmation of claims to land "to which the Indian title had been extinguished;" and it further provided for the surveying of lands "to which the Indian title has been, or shall hereafter be extinguished."

In implementing the acts, the Land Commissioners believed that they were authorized to determine, and in fact they did determine, the validity of claims to land which had been subject to Indian rights. This is evidenced not only by the confirmation of the Pellerin, Joseph and Verret titles based on their Indian deeds,[15] but also by the

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[14] As the Fifth Circuit recognized, after the Chitimachas deeded the tracts to Pellerin, Joseph and Verret, and released possession of the tracts to their vendees, any interest the Chitimachas may have had in the tracts, based on their contention that the deeds had not been formally sanctioned by the Spanish government, was incomplete.

[15] In their motions for summary judgment, respondents showed that the confirmation of the titles of their ancestors-in-title constituted an exercise by the United States of complete dominion adverse to Indian occupancy which extinguished any Indian title to the tracts. This is another independent ground supporting the decision in respondents' favor. *See* note 6 *supra*.

Opelousas Report. In that report, the Commissioners, charged by the 1807 Act with deciding claims "according to the laws and established usages and customs of the French and Spanish governments," summarized the principles that they were applying in evaluating claims based on purchases from Indians, including their understanding of Indian title and its transferability under Spanish law. Congress confirmed and adopted the Opelousas Report by Act of April 29, 1816, 3 Stat. 328, and thus by its direct action, Congress evidenced its concurrence that lands previously subject to Indian occupancy were covered by the statutes and within the decision making power of the Land Commissioners.

The effect of such legislative approval of administrative interpretations and procedures was discussed by this Court in *United States v. Arredondo*, 31 U.S. (6 Peters) 691, 8 L.Ed. 547 (1832). After noting that the title confirmation acts concerning Louisiana, Florida and Missouri were *pari materia* and that the Court should refer to prior decisions and congressional actions under those acts in evaluating claims submitted for judicial determination, the Court stated:

> Where Congress have, by confirming the reports of commissioners or other tribunals, sanctioned the rules and principles on which they were founded, it is a legislative affirmance of the construction put by these tribunals on the laws conferring the authority and prescribing the rules by which it should be exercised; or which is to all intents and purposes of the same effect in law. It is a legislative ratification of an act done without previous authority, and this subsequent recognition and adoption is of the same force as if done by preexisting power and relates back to the act done.

8 L.Ed. at 555.

Subsequently, in *Mitchel v. United States*, 34 U.S. (9 Peters) 711, 9 L.Ed. 283 (1835), the Court held that the plaintiffs' suit for recognition of titles to lands in Florida based on purchases from Indian tribes during Spanish dominion could be brought pursuant to the land claims act of May 26, 1824, 4 Stat. 52, which had been extended to Florida, and which was also extended to Louisiana by Act of June 17, 1844, 5 Stat. 676. The Court referred to the Opelousas Report and the action of Congress as controlling authorities under which it was to evaluate the claims, stating:

> The report of the commissioners on Opelousas claims was submitted to the Secretary of the Treasury in 1815; acted on and approved by Congress in 1816; in which report the commissioners state that "the right of the Indians to sell their land was always recognized by the Spanish government... The laws made it necessary when the Indians sold their lands to have the deeds presented to the governor for confirmation...The sales by the Indians transferred the kind of right which they possessed; the ratification of the sale by the governor must be regarded as a relinquishment of the title of the crown to the purchaser..., and no instance is known where permission to sell has been "refused..., or the rejection of an Indian sale."

9 L.Ed. at 300.

In view of *Mitchel* and the congressional ratification of the Opelousas Report, as well as the plain language of the statutes, there can be no question regarding the applicability of the Louisiana Land Claims Acts in this case. Nevertheless, despite these clear authorities, petitioners assert that the Louisiana Land Claims Acts did not apply to their

claims[16] because the acts did not expressly state that aboriginal claims would be barred if not timely presented. This Court's prior decisions, however, compel the opposite conclusion.

In *Barker v. Harvey*, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 (1901), the Court construed Section 13 of the California Private Land Claims Act, Act of March 3, 1851, 9 Stat. 631, which provided that "all lands the claims to which shall not have been presented" to the commissioners who were appointed to receive and act upon petitions for the confirmation of land claims "within two years after the date of this act, shall be deemed, held and considered as part of the public domain of the United States." It was held that aboriginal title claims by Indian tribes which were not presented were forfeited, and that they could not be asserted against titles which had been presented and confirmed under the act. The same ruling was made in *United States v. Title Insurance & Trust Co.*, 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110 (1924). In this case, the question is also whether aboriginal claims not presented under a land claims act were forfeited, and thus cannot now be asserted against titles which were presented and confirmed under that act.

Section 4 of the 1805 Act (and similar provisions in the subsequent Louisiana acts) provided:

> And if such person shall neglect to deliver such notice in writing of his claim, ... all his right, so far as the same is derived from the first two sections of this act, shall become void, and for ever

[16] Petitioners did not always take this position, since they themselves filed claims under subsequent Louisiana Land Claims Acts, albeit with respect to other property. *See* note 7 *supra*

> thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court of the United States, as against any grant derived from the United States.

While the Louisiana acts did not specifically and expressly state that aboriginal title claims were among those that would be barred if not timely presented, neither did the California act. Significantly, the argument that the similar California act should be construed as exempting Indian claims because of the fiduciary relationship between Indian tribes and the United States was specifically rejected by the Court in *Barker v. Harvey*. What the Court said there is equally applicable to petitioners' argument here:

> It is undoubtedly true that this government has always recognized the fact that the Indians were its wards, and entitled to be protected as such, and this court has uniformly construed all legislation in light of this recognized obligation. But the obligation is one which rests upon the political department of the government, and this court has never assumed, in the absence of congressional action, to determine what would have been appropriate legislation, or to decide the claims of the Indians as though such legislation had been had.

21 S.Ct. at 694.

Similarly, in *United States v. Arredondo*, 31 U.S. (6 Peters) 691, 8 L.Ed. 547, 568 (1832), and with specific reference to the 1824 Act which was extended to Louisiana by Act of June 17, 1844, 5 Stat. 676, and which contained a preclusive provision virtually identical to that contained

in the earlier Louisiana Land Claims Acts, this Court stated:

> [G]rants of land within the Indian boundary are not excepted in the laws referring them to judicial decision; Congress made what exceptions they thought proper; as the law had not done it, we do not feel authorized to make an exception of this.

Thus, it is clear that the lower courts were merely following this Court's prior decisions in holding that although there was no express reference to aboriginal claims in the preclusive provisions of the Louisiana Land Claims Acts, the provisions applied to those claims. It is equally clear that the holding below is entirely consistent with this Court's decision in *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 62 S.Ct. 248, 86 L.Ed. 260 (1941), the case relied upon by petitioners.

Santa Fe dealt with Act of July 22, 1854, 10 Stat. 308, involving New Mexico, and Act of July 15, 1870, 16 Stat. 291, involving Arizona. Neither of those acts contained preclusive provisions or provided any other procedure for the elimination of private land claims. Instead, the Arizona and New Mexico acts merely directed the Surveyor General of each respective area to ascertain the origin and character of claims and report on those claims to Congress for such action as Congress deemed appropriate. The question in *Santa Fe* was thus whether the mere passage of the acts extinguished Indian title in those areas. Although the Court held that they did not, the holding actually supports the decision here, since it was based on the Court's conclusion that unlike the California act construed in *Barker v. Harvey*, the Arizona and New Mexico acts had

no machinery for the extinguishment of unfiled claims.[17] As regards the existence of machinery for the extinguishment of claims, the similarities between the Louisiana and California acts have already been noted. The differences between the Louisiana and Arizona/New Mexico acts are apparent.

Thus, the decision in this case is entirely consistent with the decisions of this Court in both *Barker v. Harvey* and *Santa Fe*. Indeed, petitioners' argument does not appear to be that the decision below conflicts with the holding of the *Santa Fe* case, but only that it conflicts with the government's argument in that case.

Since the Arizona and New Mexico acts contained no preclusive provisions, the defendants in *Santa Fe* argued that the mere passage of the acts was sufficient to extinguish Indian title. As is reflected by the pages of the government's brief which petitioners have included in their appendix, the government responded to that argument by comparing the acts in question to the Louisiana Land Claims Acts. The government cited cases which involved aboriginal claims in the Louisiana Territory after the passage of the Louisiana acts, and concluded from those cases that the acts did not destroy all Indian titles in the territory. As was noted above, however, there has been no contention or holding in this case that the passage of the

[17] Thus, rather than holding that "express" legislation is required "to extinguish Indian title, or require Indians to submit their claims" under a land claims act, as petitioners suggest, the Court in *Santa Fe* recognized the validity of its decision in *Barker v. Harvey*, which had held to the contrary. Petitioners' reliance on *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661, 94 S.Ct. 772, 39 L.Ed.2d 73 (1974), in this regard is similarly misplaced. The Court there merely recognized the general rule, not contested here, that the federal government's consent is necessary to extinguish Indian title.

Louisiana Land Claims Acts extinguished all Indian titles in the Louisiana Territory. What is at issue is the operation of the preclusive provisions of those acts with respect to the Chitimachas' claims to the lands which they had previously sold to Pellerin, Joseph and Verret. Respondents do not disagree with the government's argument in *Santa Fe*, but the fact that all Indian titles were not extinguished by the passage of the Louisiana acts does not mean that Indian claims were exempt from the preclusive provisions of the acts, nor does it mean that claims of the nature at issue here were not covered by those provisions.

In sum, the decision by the Fifth Circuit in this case is clearly correct and in accordance with this Court's prior decisions regarding the similar preclusive provision contained in the California Private Land Claims Act. The decision is also entirely consistent with both the actual holding in the *Santa Fe* case and the government's argument there.

CONCLUSION

The issues presented by this case are very narrow ones which are dependent upon the particular facts involved. Based on these facts, the decisions below on the question of disqualification and on the merits are entirely correct and are in full accord with this Court's prior decisions and the decisions of other federal courts of appeal. There is therefore, no reason for this Court to grant the writ which petitioners seek.

Respectfully submitted,

Gene W. Lafitte

Moise W. Dennery

Randall C. Songy

CERTIFICATE OF SERVICE

I hereby certify that the required copies of this Joint Brief of Respondents in Opposition have been served on each party separately represented in the proceeding, as required by Rule 28.3 of this Court.

Gene W. Lafitte

APPENDIX A

Act of March 2, 1805, 2 Stat. 324

CHAP. XXVI.—*An act for ascertaining and adjusting the titles and claims to land, within the territory of Orleans, and the district of Louisiana.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or persons, and the legal representatives of any person or persons, who on the first day of October, in the year one thousand eight hundred, were resident within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, one thousand eight hundred and three, and who had prior to the said first day of October, one thousand eight hundred, obtained from the French or Spanish governments respectively, during the time either of the said governments had the actual possession of said territories, any duly registered warrant, or order of survey for lands lying within the said territories to which the Indian title had been extinguished, and which were on that day actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands in the same manner as if their titles had been completed: *Provided however,* that no such incomplete title shall be confirmed, unless the person in whose name such warrant or order of survey had been granted, was at the time of its date, either the head of a family, or above the age of twenty-one years: nor unless the conditions and terms on which the completion of the grant might depend, shall have been fulfilled.

SEC. 2. *And be it further enacted,* That to every

person, or to the legal representative or representatives of every person, who being either the head of a family, or twenty-one years of age, had prior to the twentieth day of December, one thousand eight hundred and three, with the permission of the proper Spanish officer, and in conformity with the laws, usages and customs of the Spanish government, made an actual settlement on a tract of land within the said territories, not claimed by virtue of the preceding section, or of any Spanish or French grant made and completed before the first day of October, one thousand eight hundred, and during the time the government which made such grant had the actual possession of the said territories, and who did on the said twentieth day of December, one thousand eight hundred and three, actually inhabit and cultivate the said tract of land; the tract of land thus inhabited and cultivated, shall be granted: *Provided however*, that not more than one tract shall be thus granted to any one person, and the same shall not contain more than one mile square, together with such other and further quantity, as heretofore has been allowed for the wife and family of such actual settler, agreeably to the laws, usages and customs of the Spanish government: *Provided also*, that this donation shall not be made to any person who claims any other tract of land in the said territories by virtue of any French or Spanish grant.

SEC. 3. *And be it further enacted*, That for the purpose of more conveniently ascertaining the titles and claims to land in the territory ceded as aforesaid, the territory of Orleans shall be laid off into two districts, in such manner as the President of the United States shall direct; in each of which, he shall appoint, in the recess of the Senate, but who shall be nominated at their next meeting, for their advice and consent, a register; who shall receive the same annual compensation, give security in the same

manner, and in the same sums, and whose duties and authorities shall in every respect be the same in relation to the lands which shall hereafter be disposed of at their offices, as are by law provided with respect to the registers in the several offices established for the disposal of the lands of the United States, north of the river, Ohio, and above the mouth of Kentucky river. The President of the United States shall likewise appoint a recorder of land titles in the district of Louisiana, who shall give security in the same manner, and in the same sums, and shall be entitled to the same annual compensation, as the registers of the several land-offices.

SEC. 4. *And be it further enacted*, That every person claiming lands in the above-mentioned territories, by virtue of any legal French or Spanish grant, made and completed before the first day of October, one thousand eight hundred, and during the time the government which made such grant had the actual possession of the territories, may, and every person claiming lands in the said territories, by virtue of the two first sections of this act, or by virtue of any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, shall, before the first day of March, one thousand eight hundred and six, deliver to the register of the land-office, or recorder of land titles, within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plat of the tract or tracts claimed; and shall also, on or before that day, deliver to the said register or recorder, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim; and the same shall be recorded by the register or recorder, or by the translator herein after mentioned, in books to be kept by them for that purpose, on receiving from the parties at the rate of twelve

and an half cents for every hundred words contained in such written evidence of their claim: *Provided however*, that where lands are claimed by virtue of a complete French or Spanish grant as aforesaid, it shall not be necessary for the claimant to have any other evidence of his claim recorded, except the original grant or patent, together with the warrant, or order of survey, and the plat; but all the other conveyances or deeds shall be deposited with the register or recorder, to be by them laid before the commissioners herein after directed to be appointed, when they shall take the claim into consideration. And if such person shall neglect to deliver such notice in writing of his claim, together with a plat as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the two first sections of this act, shall become void, and for ever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court of the United States, against any grant derived from the United States. The said register and recorder shall commence the duties hereby enjoined on them, on or before the first day of September next, and continue to discharge the same, at such place in their respective districts, as the President of the United States shall direct.

SEC. 5. *And be it further enacted*, That two persons to be appointed by the President alone, for the district of Louisiana, and two persons to be in the same manner appointed for each of the districts directed by this act to be laid off in the territory of Orleans, shall, together with the register or recorder of the district for which they may be appointed, be commissioners for the purpose of ascertaining within their respective districts, the rights of persons

claiming under any French or Spanish grant as aforesaid, or under the two first sections of this act. The said commissioners shall, previous to their entering on the duties of their appointment, respectively take and subscribe the following oath or affirmation, before some person qualified to administer the same: "I do solemnly swear, (or affirm,) that I will impartially exercise and discharge the duties imposed on me by an act of Congress, intituled 'An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans, and the district of Louisiana,' to the best of my skill and judgment." It shall be the duty of the said commissioners to meet in their respective districts, at such place as the President shall have directed therein, for the residence of the register or recorder, on or before the first day of December next, and they shall not adjourn to any other place, nor for a longer time than three days, until the first day of March, one thousand eight hundred and six, and until they shall have completed the business of their appointment. Each board, or a majority of each board, shall, in their respective districts, have power to hear and decide in a summary manner, all matters respecting such claims, also to administer oaths, to compel the attendance of, and examine witnesses, and such other testimony as may be adduced, to demand and obtain from the proper officer and officers, all public records, in which grants of land, warrants, or orders of survey, or any other evidence of claims to land, derived from either the French or Spanish governments, may have been recorded; to take transcripts of such record or records, or of any part thereof; to have access to all other records of a public nature, relative to the granting, sale, transfer, or titles of lands, within their respective districts; and to decide in a summary way, according to justice and equity, on all claims filed with the register or recorder, in conformity with the provisions of this act, and on all complete

French or Spanish grants, the evidence of which, though not thus filed, may be found of record on the public records of such grants; which decisions shall be laid before Congress in the manner herein after directed, and be subject to their determination thereon: *Provided however*, that nothing in this act contained, shall be construed so as to recognize any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, or to authorize the commissioners aforesaid to make any decision thereon. The said boards respectively shall have power to appoint a clerk, whose duty it shall be to enter in a book to be kept for that purpose, full and correct minutes of their proceedings and decisions, together with the evidence on which such decisions are made, which books and papers, on the dissolution of the boards, shall be deposited in the respective offices of the registers of the land-offices, or of the recorder of land titles of the district; and the said clerk shall prepare two transcripts of all the decisions made by the commissioners in favour of the claimants to land; both of which shall be signed by a majority of the said commissioners, and one of which shall be transmitted to the officer exercising in the district the authority of surveyor-general; and the other to the Secretary of the Treasury. It shall likewise be the duty of the said commissioners, to make to the Secretary of the Treasury a full report of all claims filed with the register of the proper land-office, or recorder of land titles, as above directed, which may have been rejected, together with the substance of the evidence adduced in support thereof, and such remarks thereon as they may think proper; which reports, together with the transcripts of the decisions of the commissioners in favour of the claimants, shall be laid by the Secretary of the Treasury before Congress, at their next ensuing meeting. When any Spanish or French grant, warrant, or order of survey, as aforesaid, shall be produced

to either of the said boards, for lands, which were not at the date of such grant, warrant, or order of survey, or within one year thereafter, inhabited, cultivated, or occupied, by or for the use of the grantee; or whenever either of the said boards shall not be satisfied that such grant, warrant, or order of survey, did issue at the time when the same bears date, but that the same is antedated or otherwise fraudulent; the said commissioners shall not be bound to consider such grant, warrant, or order of survey, as conclusive evidence of the title, but may require such other proof of its validity as they may deem proper. Each of the commissioners and clerks aforesaid, shall be allowed a compensation of two thousand dollars in full for his services as such; and each of the said clerks shall, previous to his entering on the duties of his office, take and subscribe the following oath or affirmation, to wit: "I do solemnly swear, (or affirm,) that I will truly and faithfully discharge the duties of a clerk to the board of commissioners, for examining the claims to land, as enjoined by an act of Congress, intituled 'An act ascertaining and adjusting the titles and claims to land within the territory of Orleans, and the district of Louisiana.' " Which oath or affirmation shall be entered on the minutes of the board.

SEC. 6. *And be it further enacted,* That the Secretary of the Treasury shall be, and he is hereby authorized to employ three agents, one for each board, and whose compensation shall not exceed one thousand five hundred dollars each, for the purpose of appearing before the commissioners, in behalf of the United States, to investigate the claims for lands, and to oppose all such as said agents may deem fraudulent and unfounded. It shall also be the duty of the said agent for the district of Louisiana, to examine into and investigate the titles and claims, if any there be, to the lead mines within the said district, to

collect all the evidence within his power, with respect to the claims to, and value of the said mines, and to lay the same before the commissioners, who shall make a special report thereof, with their opinions thereon, to the Secretary of the Treasury, to be by him laid before Congress, at their next ensuing session. The said board of commissioners shall each be authorized to employ a translator of the Spanish and French languages, to assist them in the despatch of the business which may be brought before them, and for the purpose of recording Spanish and French grants, deeds, or other evidences of claims on the registers' books. The said translator shall receive, for the recording done by him, the fees already provided by law, and may be allowed, not exceeding fifty dollars, for every month he shall be employed; provided that the whole compensation, other than that arising from fees, shall not exceed six hundred dollars.

SEC. 7. *And be it further enacted,* That the powers vested by law in the surveyor of the lands of the United States, south of the state of Tennessee, shall extend over all the public lands of the United States, to which the Indian title has been, or shall hereafter be extinguished, within the said territory of Orleans; and it shall be the duty of the said surveyor to cause such of the said lands, as the President of the United States shall expressly direct, to be surveyed, and divided, as nearly as the nature of the country will admit, in the same manner, and under the same regulations as is provided by law, in relation to the lands of the United States northwest of the river Ohio, and above the mouth of Kentucky river.

SEC. 8. *And be it further enacted,* That the location, or locations of lands which Major General La Fayette is by law authorized to make on any lands, the property of the United States, in the territory of Orleans, shall be made

with the register or registers of the land-offices established by this act in the said territory: the surveys thereof shall be executed under the authority of the surveyor of the lands of the United States, south of Tennessee; and a patent or patents therefor shall issue, on presenting such surveys to the Secretary of the Treasury, together with a certificate of the proper register, or registers, stating that the land is not rightfully claimed by any other person: *Provided*, that no location or survey made by virtue of this section shall contain less than one thousand acres, nor include any improved lands or lots, salt spring or lead mine.

SEC. 9. *And be it further enacted*, That a sum not exceeding fifty thousand dollars, to be paid out of any unappropriated monies in the treasury, be, and the same is hereby appropriated for the purpose of carrying this act into effect.

APPROVED, March 2, 1805.

APPENDIX B

Act of April 21, 1806, 2 Stat. 391

CHAP. XXXIX.—*An Act supplementary to an act intituled "An act for ascertaining and adjusting the titles and claims to land, within the territory of Orleans, and the district of Louisiana."*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person or persons claiming a tract of land, by virtue of the second section of the act, to which this act is a supplement, and who had commenced an actual settlement on such tract, prior to the first day of October, one thousand eight hundred, and had continued actually to inhabit and cultivate the same, during the term of three years from the time when such actual settlement had commenced, and prior to the twentieth day of December, eighteen hundred and three, shall be considered as having made such settlement with the permission of the proper Spanish officer, although it may not be in the power of such person or persons to produce sufficient evidence of such permission.

SEC. 2. *And be it further enacted,* That every person or persons rightfully claiming a tract of land, not exceeding six hundred and forty acres, by virtue of the act, to which this act is a supplement, shall be confirmed in his or their claims, if otherwise embraced by the provisions of the said act, although the person or persons, under whom the claim or claims originated, were not at the time when the same originated, above the age of twenty-one years: *Provided,* that the tract of land thus claimed, had been for the space of ten consecutive years, prior to the twentieth day of

December, eighteen hundred and three, in the quiet possession of, and actually inhabited and cultivated by such person or persons, or for his or their use.

SEC. 3. *And be it further enacted*, That the time fixed by the act to which this act is a supplement, for delivering to the register of the proper land-office notices in writing, and the written evidences of claims to land in the territory of Orleans, be, and the same is hereby extended, till the first day of January next; and persons delivering such notices and evidences, shall be entitled to the same benefits as if the same had been delivered prior to the first day of March last; but the rights of such persons, as shall neglect so doing, within the time limited by this act, shall be barred, and the evidences of their claims never after admitted as evidence, in the same manner as had been provided by the fourth section of the act, to which this act is a supplement, in relation to claims, notices, and written evidences of which, should not be delivered, prior to the said first day of March last.

SEC. 4. *And be it further enacted*, That the registers of the land-offices in the territory of Orleans, respectively, be, and they are hereby authorized to appoint so many deputies, not exceeding one for each county, in their respective districts, as they may think necessary; whose duty it shall be to receive, enter, and file notices, and to receive and record written evidences of claims to lands lying in the county, or counties, to them respectively assigned, in the same manner as the register might do; and also, to transmit to the register the said notices and evidences, or such transcripts of abstracts of the same, as the said register, or the commissioners, may direct; and generally to do and perform all such acts, in relation to such claims, as the said register may direct. Persons having claims to land,

may deliver the notices and evidences of the same, at their option, either to the register of the proper land-office, or to his deputy, for the county in which such land lies; and each of the said deputies shall be entitled to receive the recording fees, allowed to the register, by the act to which this act is a supplement, and in addition thereto, (or a compensation of five hundred dollars in full for all his services,) at the rate of one dollar for every claim filed with him, to be paid out of the monies appropriated for carrying into effect the act to which this act is a supplement.

SEC. 5. *And be it further enacted,* That the commissioners, appointed for the purpose of ascertaining the rights of persons, claiming lands in the territory of Orleans shall, in their respective districts, have the same powers, and perform the same duties, in relation to the claims thus filed before the first day of January next, as if notice of the same had been given before the first day of March last, and as was provided by the act to which this act is a supplement, in relation to the claims therein described. Transcripts of the decisions of the said commissioners, and reports of the claims filed in conformity with the provisions of this act, shall be made and transmitted, as was provided by the act to which this act is a supplement, in relation to the claims therein described. It shall likewise be the duty of the said commissioners, to inquire into the nature and extent of the claims which may arise from a right, or supposed right, to a double or additional concession on the back of grants or concessions heretofore made, or from grants or concessions heretofore made to minors, and not embraced by the provisions of this act, or from grants or concessions made by the Spanish government, subsequent to the first day of April, one thousand eight hundred, for lands which were actually settled and inhabited on the twentieth day of December, one thousand eight hundred

and three; and to make a special report thereon to the Secretary of the Treasury; which report shall be, by him, laid before Congress at their next ensuing session. And the lands which may be embraced by such report, shall not be otherwise disposed of, until a decision of Congress shall have been had thereupon.

SEC. 6. *And be it further enacted,* That each of the registers aforesaid, shall, in addition to his other emoluments, receive a compensation of five hundred dollars for the services to be performed, under this act, prior to the first day of January next; and each of the commissioners aforesaid, shall receive at the rate of six dollars a day for every day's actual attendance on the duties of his office, subsequent to the first day of January next: *Provided,* that the whole amount of compensation thus allowed, shall not for any commissioner exceed two thousand dollars: *And provided also,* that the President of the United States may, if he shall think proper, reduce, after the first day of January next, the number of commissioners on either or both boards, to one or two persons, and in case of such reduction the commissioner or commissioners constituting the board, shall have the same powers which are vested by this act, or by the act to which this act is a supplement, in the board established by the act, to which this act is a supplement. The clerk of each of the boards shall be entitled to receive at the rate of fifteen hundred dollars a year; the translators at the rate of six hundred dollars a year, and the agents employed by the Secretary of the Treasury at the rate of fifteen hundred dollars a year, from the first day of January next, to the time when each board shall respectively be dissolved. *Provided,* that no more than one year's compensation be thus allowed to each of the said clerks, translators, and agents: *And provided also,* that the Secretary of the Treasury may discontinue either

one or both of said agents, whenever he shall think it proper.

SEC. 7. *And be it further enacted*, That the commissioners appointed for the purpose of ascertaining the rights of persons, claiming lands in the territories of Orleans and Louisiana, be, and they are hereby authorized, if they shall think it necessary, for the purpose of obtaining oral evidence, either in support of, or in opposition to claims, which evidence could not be given at the usual place of their sittings, without oppression to the parties or witnesses, to remove their sittings, or to send for that purpose, one or more members of the board, to such other place or places, within their respective districts, as they may think necessary: And each of the commissioners going for that purpose, to such other place or places, shall, in addition to his compensation, receive at the rate of six dollars for every twenty miles, going to and returning from such place or places: *Provided*, that no commissioner shall receive in the whole, on that account, more than for the distance, from the usual place of the sittings of the board to the extreme settlements within his respective district.

SEC. 8. *And be it further enacted*, That each of the boards aforesaid, shall prepare and cause to be prepared, the reports and transcripts, which by law they are directed to make to the Secretary of the Treasury, in conformity with such forms as he may prescribe; and they shall also, in their several proceedings and decisions, conform to such instructions, as the said secretary may, with the approbation of the President of the United States, transmit to them in relation thereto.

SEC. 9. *And be it further enacted*, That the surveyor of the public lands, south of Tennessee, be, and he is

hereby directed to appoint a principal deputy for each of the two land districts of the territory of Orleans, whose duty it shall be to reside and keep an office in the said districts respectively, to execute, or cause to be executed by the other deputies, such surveys as have been or may be authorized by law, or as the commissioners aforesaid may direct; to file and record all such surveys, to form as far as practicable, connected drafts of the lands granted in the district, so as to exhibit the lands remaining vacant, and generally to perform in such districts respectively, in conformity with the regulations and instructions of the said surveyor of the public lands south of the state of Tennessee, the duties imposed by law on said surveyor. And each of the said principal deputies shall receive an annual compensation of five hundred dollars, and in addition thereto, the following fees, that is to say: for examining and recording the surveys executed by any of the deputies, at the rate of twenty-five cents for every mile of the boundary line of such survey; and for a certified copy of any plot of a survey in the office, twenty-five cents.

SEC. 10. *And be it further enacted*, That the President of the United States be, and he hereby is authorized, whenever he shall think it proper, to appoint a receiver of public monies for the western district of the territory of Orleans, who shall receive the same annual compensation, give security in the same manner and in the same sums, and whose duties and authorities shall in every respect be the same in relation to the lands which shall hereafter be disposed of at their offices, as are by law provided with respect to the receivers of public monies, in the several offices established for the disposal of the lands of the United States, north of the river Ohio, and above the mouth of Kentucky river. And the said receiver, and the register of the land-office, for the same district shall, whenever the

public lands within the same shall be offered for sale, be entitled to the same commissions and fees, which are by law respectively allowed to the same officers, north of the river Ohio, and above the mouth of Kentucky river.

SEC. 11. *And be it further enacted*, That the President of the United States be, and he is hereby authorized, whenever he shall think it proper, to direct so much of the public lands lying in the western district of the territory of Orleans, as shall have been surveyed in conformity with the provisions of the act to which this act is a supplement, to be offered for sale. All such land shall, with the exception of the section "number sixteen," which shall be reserved in each township for the support of schools within the same; with the exception also of an entire township to be located by the Secretary of the Treasury, for the use of a seminary of learning, and with the exception also of the salt springs, and lands contiguous thereto, which by direction of the President of the United States, may be reserved for the future [disposal] of the said States, shall be offered for sale to the highest bidder, under the direction of the register of the land-office, of the receiver of public monies, and of the principal deputy surveyor; and on such day or days, as shall, by a public proclamation of the President of the United States, be designated for that purpose. The sales shall remain open for three weeks and no longer; the lands shall be sold for a price not less than that which has been, or may be fixed by law, for the public lands in the Mississippi territory, and shall in every other respect be sold in tracts of the same size, on the same terms and conditions as have been, or may be by law provided for the lands sold in the Mississippi territory. The superintendents of the said public sales shall receive six dollars, each, for each day's attendance on the said sales. All lands, other than the reserved sections, and those excepted as above mentioned,

remaining unsold at the closing of the public sales, may be disposed of at private sale, by the register of the land-office, in the same manner, under the same regulations, for the same price, and on the same terms and conditions as are, or may be provided by law, for the sale of the lands of the United States in the Mississippi territory. And patents shall be obtained for all lands granted or sold in the territory of Orleans, in the same manner and on the same terms, as is, or may be provided by law for lands sold in the Mississippi territory.

SEC. 12. *And be it further enacted*, That the location or locations of land, which may be made in the territory of Orleans, by Major General La Fayette, by virtue of the ninth section of the act to which [this] act is a supplement, shall and may be received, though containing less than one thousand acres: *Provided*, that no such location or survey shall contain less than five hundred acres.

SEC. 13. *And be it further enacted*, That the Secretary of the Treasury be authorized to cause a survey to be made of the sea-coast of the territory of Orleans, from the mouth of the Mississippi to Vermilion bay inclusively, and as much farther westwardly as the President of the United States shall direct, and also of the bays, inlets, and navigable waters connected therewith: *Provided*, that the expense of such survey shall not exceed five thousand dollars.

SEC. 14. *And be it further enacted*, That a sum not exceeding twenty thousand dollars, in addition to the sum appropriated by the act to which this act is a supplement, and to be paid out of any unappropriated monies in the treasury, be, and the same is hereby appropriated, for the purpose of carrying this act into effect.

APPROVED, April 21, 1806.

APPENDIX C

Act of March 3, 1807, 2 Stat. 440

CHAP. XXXVI.—*An Act respecting claims to land in the territories of Orleans and Louisiana.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the first section of the act, intituled "An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana," as provides that no incomplete title shall be confirmed, unless the person in whose name the warrant or order of survey had been granted, was at the time of its date, either the head of a family, or above the age of twenty-one years, be and the same is hereby repealed.

SEC. 2. *And be it further enacted,* That any person or persons, and the legal representative of any person or persons, who, on the twentieth day of December, one thousand eight hundred and three, had for ten consecutive years prior to that day, been in possession of a tract of land not claimed by any other person, and not exceeding two thousand acres, and who were on that day resident in the territory of Orleans or Louisiana, and had still possession of such tract of land, shall be confirmed in their titles to such tract of land: *Provided,* that no claim to a lead mine or salt spring, shall be confirmed merely by virtue of this section: *And provided also,* that no more land shall be granted by virtue of this section, than is actually claimed by the party, nor more than is contained within the acknowledged and ascertained boundaries of the tract claimed.

SEC. 3. *And be it further enacted,* That the claim of the corporation of the city of New Orleans, to the commons adjacent to the said city, and within six hundred yards from the fortifications of the same, be, and the same are hereby recognized and confirmed: *Provided,* that the said corporation shall within six months after passing this act, relinquish and release any claim they may have to such commons beyond the distance of six hundred yards aforesaid: *Provided also,* that the corporation shall reserve for the purpose, and convey gratuitiously for the public benefit, to the company authorized by the legislature of the territory of Orleans, as much of the said commons as shall be necessary to continue the canal of Carondelet from the present basin to the Mississippi, and shall not dispose of, for the purpose of building thereon, any lot within sixty feet of the space reserved for a canal, which shall for ever remain open as a public highway: *And provided also,* that nothing herein contained, shall be construed to affect or impair the rights of any individual or individuals to the said commons, which are derived from any grant of the French or Spanish government.

SEC. 4. *And be it further enacted,* That the commissioners appointed or to be appointed for the purpose of ascertaining the rights of persons claiming land in the territories of Orleans and Louisiana, shall have full powers to decide according to the laws and established usages and customs of the French and Spanish governments, upon all claims to lands within their respective districts, where the claim is made by any person or persons, or the legal representative of any person or persons, who were on the twentieth of December, one thousand eight hundred and three, inhabitants of Louisiana, and for a tract not exceeding the quantity of acres contained in a league square, and which does not include either a lead mine or salt

spring, which decision of the commissioners when in favour of the claimant shall be final, against the United States, any act of Congress to the contrary notwithstanding.

SEC. 5. *And be it further enacted*, That the time fixed by the act above mentioned, and by the acts supplementary to the same, for delivering to the proper register or recorder, notices in writing and the written evidences of claims to land, be, and the same is hereby extended, for the territories of Orleans and Louisiana, till the first day of July, one thousand eight hundred and eight, and persons delivering such notices and evidences shall be entitled to the same benefit as if the same had been delivered within the time limited by the former acts; but the rights of such persons as shall neglect so doing within the time limited by this act, shall, so far as they are derived from or founded on any act of Congress, ever after be barred and become void, and the evidences of their claims never after admitted as evidence in any court of law or equity whatever.

SEC. 6. *And be it further enacted*, That the commissioners appointed or to be appointed for the purpose of ascertaining the rights of persons claiming lands in the territories of Orleans and Louisiana, shall respectively transmit to the Secretary of the Treasury and to the surveyor-general, or officer acting as surveyor-general, transcripts of the final decisions made in favour of claimants by virtue of this act, and they shall deliver to the party a certificate stating the circumstances of the case, and that he is entitled to a patent for the tract of land therein designated, which certificate shall be filed with the proper register or recorder, within twelve months after date. And the register or recorder shall thereupon (a plat of the tract of land therein designated, being previously filed with him or transmitted to him by the officer acting as

surveyor-general in the manner herein after provided,) issue a certificate in favour of the party, which certificate being transmitted to the Secretary of the Treasury, shall entitle the party to a patent, to be issued in like manner as is provided by law for the issuing of patents for public lands lying in other territories of the United States.

SEC. 7. *And be it further enacted,* That the tracts of land thus granted by the commissioners shall be surveyed at the expense of the parties, under the direction of the surveyor-general, or officer acting as surveyor-general, in all cases where an authenticated plat of the land as surveyed under the authority of the officer acting as surveyor-general under the French, Spanish, or American governments respectively, during the time either of the said governments had the actual possession of the said territories of Orleans and Louisiana, shall not have been filed with the proper register or recorder, or shall not appear of record on the public records of the said territories of Orleans and Louisiana. The said commissioners shall also be authorized, whenever they may think it necessary, to direct the surveyor-general, or officer acting as such, to cause any tract of land already duly surveyed, to be re-surveyed at the expense of the United States. And the surveyor-general, or officer acting as such, shall transmit general and particular plats of the tracts of land thus surveyed, to the proper register or recorder, and shall also transmit copies of the said plats to the Secretary of the Treasury.

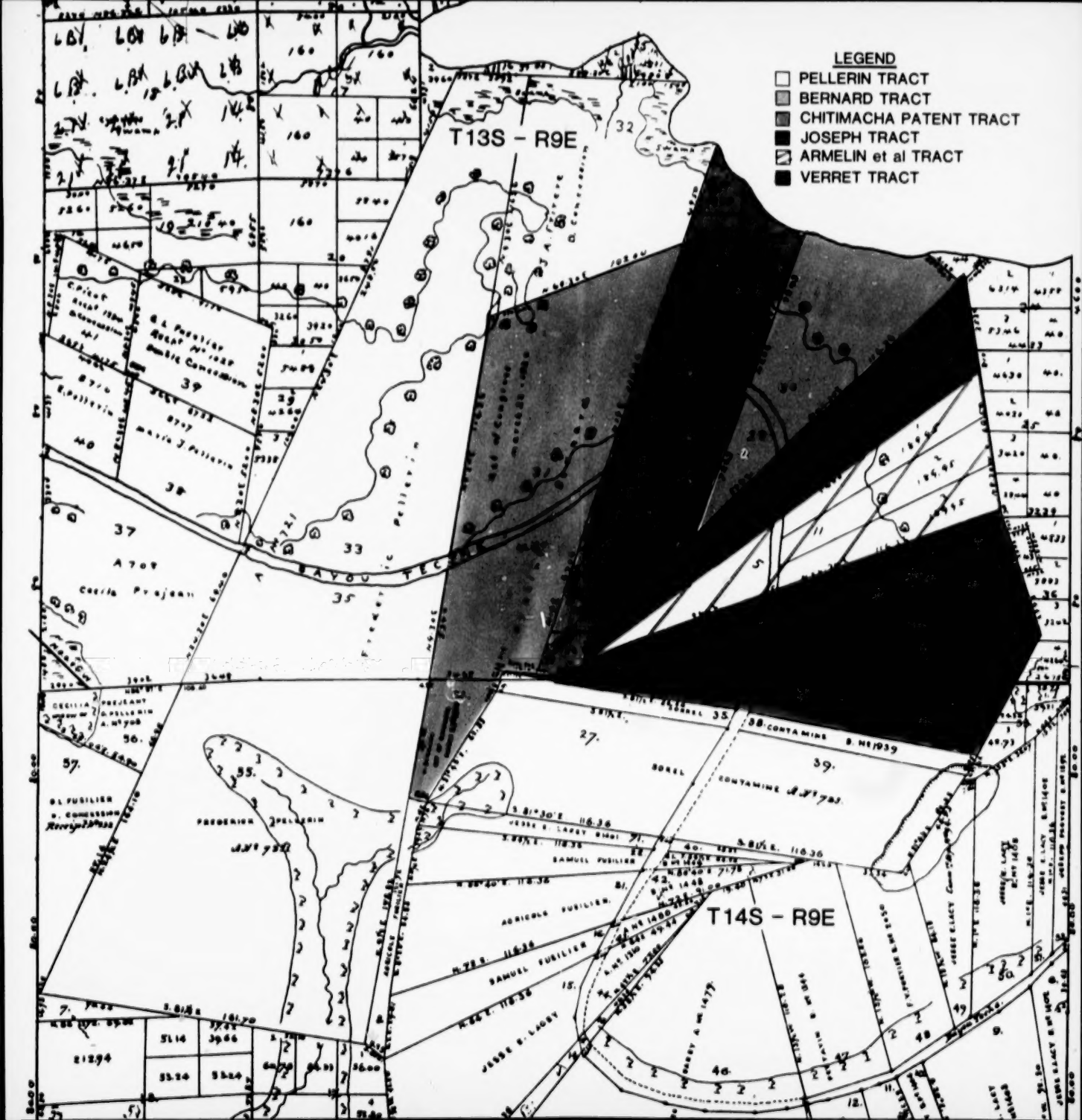
SEC. 8. *And be it further enacted,* That the commissioners aforesaid shall respectively report to the Secretary of the Treasury their opinion on all the claims to land within their respective districts, which they shall not have finally confirmed by the fourth section of this act. The

claims shall, in the said report or reports, be arranged into three general classes, that is to say: first, claims which, in the opinions of the commissioners, ought to be confirmed in conformity with the provisions of the several acts of Congress, for ascertaining and adjusting the titles and claims to land within the territories of Orleans and Louisiana; secondly, claims which, though not embraced by the provisions of the said acts, ought nevertheless in the opinion of the commissioners to be confirmed in conformity with the laws, usages, and customs of the Spanish government; thirdly, claims which neither are embraced by the provisions of the said acts, nor ought in the opinion of the commissioners to be confirmed in conformity with the laws, usages, and customs of the Spanish government; and the said report and reports being in other respects made in conformity with the forms prescribed according to law, by the Secretary of the Treasury, shall by him be laid before Congress, for their final determination thereon, in the manner and at the time heretofore prescribed by law for that purpose.

SEC. 9. *And be it further enacted*, That the following allowances and compensations shall be made to the several officers herein after mentioned, that is to say, to the principal deputy of the surveyor-general, for the district of Louisiana, at the rate of five hundred dollars a year, from the time he entered into the duties of his office, in addition to the fees which he is entitled to receive by law. To the register of the western district of the Orleans territory, and to the clerk of the board of commissioners for that district, one thousand dollars each, for their services as commissioners and clerk respectively, during the year one thousand eight hundred and six. To each of the deputy registers of the territory of Orleans, five hundred dollars in full, for their services subsequent to the first day of January last,

in addition to the fees to which they are legally entitled. To each of the commissioners at the rate of two thousand dollars a year; to each of the clerks of the boards, and to each of the agents employed by the Secretary of the Treasury, at the rate of fifteen hundred dollars a year, and to each of the translators, at the rate of six hundred dollars a year, to commence from the first day of July next, in the district of Louisiana, and from the first day of January next, in the territory of Orleans, and to continue to the time when each board shall be respectively dissolved: *Provided*, that no more than eighteen months' compensation be thus allowed to the said commissioners, clerks, and translators, and that the compensation of any such officer absenting himself from his district, or failing to attend to the duties of his office, shall cease during such absence or failure.

APPROVED, March 3, 1807.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